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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ANTHONY H., a Person Coming  
Under the Juvenile Court Law.

IMPERIAL COUNTY DEPARTMENT  
OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

LOS ANGELES COUNTY DEPT. OF  
CHILDREN & FAMILY SERVICES, et  
al.,

Defendants and Appellants.

D055255

(Super. Ct. No. JJP2148)

APPEAL from an order of the Superior Court of Imperial County, Juan Ulloa,  
Judge. Reversed.

The Los Angeles County Department of Children and Family Services (Los Angeles Department) and child Anthony H. appeal the transfer of Anthony's juvenile dependency case from Imperial County, where Anthony was placed with a relative, to

Los Angeles County, where Anthony was originally detained. Anthony's mother and alleged father, Claudia H. and Adrian M., also request reversal of the transfer order. We reverse.

## BACKGROUND

In October 2008 the Los Angeles Department filed a dependency petition for three-month-old Anthony. The petition alleged Claudia and Adrian were unable to care for and supervise Anthony. Claudia and Adrian had been arrested in Los Angeles County and were incarcerated. They were subject to immigration holds.

When the petition was filed Claudia lived in San Bernardino County with Anthony. Adrian lived in Los Angeles County. Claudia's three older children were with Claudia's neighbor in San Bernardino County.<sup>1</sup> San Bernardino County declined to assume responsibility for Anthony. The Los Angeles County Juvenile Court (the Los Angeles court) ordered him detained in foster care.

In November 2008 Anthony was detained in the Imperial County home of maternal relative Rosario M. Claudia and Adrian were deported to Mexico. They lived in Mexicali but planned to reenter the United States illegally once Anthony was returned

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<sup>1</sup> One of Claudia's relatives, who lived in Imperial County, told the Los Angeles Department that the older children were going to be taken to Imperial County and possibly to Mexico to be cared for by their maternal grandmother. Claudia later said that one of the three children was living with a relative in Imperial County. In 2003 there was a child welfare report in Imperial County regarding one of the children.

to Claudia.<sup>2</sup> In December the Los Angeles court entered true findings on the petition, declared Anthony a dependent, removed him from his parents' custody and placed him in the care of the Los Angeles Department for placement with Rosario. The Los Angeles court ordered reunification services for both parents and set a six-month review hearing for June 2009.

In March 2009 the Los Angeles Department recommended the case be transferred to Imperial County. The Los Angeles Department noted Claudia and Adrian no longer resided in San Bernardino County,<sup>3</sup> Anthony was placed in Imperial County and transfer would make services more readily available to Anthony and Rosario and would facilitate Claudia's and Adrian's reunification with Anthony. At a hearing on March 9 the Los Angeles court transferred the case to Imperial County.

On March 10, 2009, the Imperial County Juvenile Court (the Imperial County court) set a transfer-in hearing for April 6. At the April 6 hearing counsel for the Imperial County Department of Social Services (the Imperial County Department) asked the court "to transfer the case back out." The court correctly stated it did not have jurisdiction to refuse the transfer and ordered "a progress report be prepared or secured from Los Angeles or from somebody." The court set a hearing for April 20. On April 8

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<sup>2</sup> Claudia's criminal record includes several arrests in Imperial County for offenses related to illegal border crossing.

<sup>3</sup> There is no evidence Adrian ever lived in San Bernardino County.

an Imperial County Department social worker gave telephonic notice of the hearing to the Los Angeles Department.<sup>4</sup>

On April 16, 2009, the Imperial County Department filed a report stating the following. Anthony remained in Imperial County with Rosario. Claudia and Adrian still lived in Mexicali. Claudia confirmed she had lived in San Bernardino County before her incarceration and she and Adrian had not lived in Imperial County for four or five years. Claudia said she and Adrian were receiving services through DIF, a Mexican social services agency (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1408), and asked that the case remain in Imperial County. The Imperial County Department recommended the case be transferred back to Los Angeles County because Imperial County was not Claudia's and Adrian's place of residence and the case had been improperly transferred to Imperial County.

At the April 20, 2009 hearing, Anthony's counsel asked the Imperial County court to consider Anthony's best interests and retain the case. Counsel stated that according to Rosario, Claudia's three older children were living in Imperial County and had been living there "for quite a while." Counsel noted that Anthony, his siblings and the relative caretakers resided in Imperial County. Counsel for the Imperial County Department

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<sup>4</sup> There is no indication in the record that the Los Angeles Department was notified of the Imperial County court's order for a progress report.

responded that the older children were "not siblings"<sup>5</sup> and, according to the social worker, Claudia had confirmed that the older children lived in San Bernardino County.

The Imperial County court made the following findings. It would be "problematic to have [the Imperial County Department] . . . provide supervision services." Claudia and Adrian resided in Mexico and had "not resided in Imperial County." Anthony resided with Rosario in Los Angeles.<sup>6</sup> Anthony's legal residence was that of his parents. Los Angeles County was his parents' "[l]ast legal residence within California" and Anthony's current legal residence. The court concluded that transfer would not be detrimental to Anthony's best interests and ordered the case transferred to Los Angeles County.

#### DISCUSSION

We review the inter county transfer of a dependency case for abuse of discretion. (*In re J.C.* (2002) 104 Cal.App.4th 984, 993; *In re R.D.* (2008) 163 Cal.App.4th 679, 684-685.) We conduct a de novo review of the interpretation of relevant statutes and rules. (*In re R.D.*, *supra*, at pp. 684, 686.)

To decide whether the Imperial County court properly transferred the case to the Los Angeles court, we must determine where Anthony resided when the transfer occurred. This is a question of law (*In re R.D.*, *supra*, 163 Cal.App.4th at p. 686) and is

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<sup>5</sup> The reason for this statement is unclear. Perhaps counsel meant that the older children were Anthony's half siblings.

<sup>6</sup> The minute order correctly states that Rosario lived in Imperial County, not Los Angeles County.

governed by Welfare and Institutions Code section 17.1 and California Rules of Court, rule 5.610(a).<sup>7</sup>

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<sup>7</sup> All statutory references are to the Welfare and Institutions Code and all rule references are to the California Rules of Court.

Section 17.1 states: "Unless otherwise provided under the provisions of this code, to the extent not in conflict with federal law, the residence of a minor person shall be determined by the following rules: [¶] (a) The residence of the parent with whom a child maintains his or her place of abode . . . or the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child. [¶] (b) Wherever in this section it is provided that the residence of a child is determined by the residence of the person who has custody, 'custody' means the legal right to custody of the child unless that right is held jointly by two or more persons, in which case 'custody' means the physical custody of the child by one of the persons sharing the right to custody. [¶] (c) The residence of a foundling shall be deemed to be that of the county in which the child is found. [¶] (d) If the residence of the child is not determined under (a), (b), (c) or (e) hereof, the county in which the child is living shall be deemed the county of residence, if and when the child has had a physical presence in the county for one year. [¶] (e) If the child has been declared permanently free from the custody and control of his or her parents, his or her residence is the county in which the court issuing the order is situated." (§ 17.1.)

It is clear where Anthony resided at the inception of this case. Because the record does not disclose any custody order predating the filing of the dependency petition or any paternity finding, Anthony's residence when the petition was filed was in San Bernardino County, where he lived with Claudia. (Rule 5.610(a); § 17.1, subds. (a), (b).)

When the Los Angeles court transferred the case to the Imperial County court, and when the Imperial County court transferred the case back to the Los Angeles court, Anthony's residence was in Imperial County, where he lived with Rosario. (Rule 5.610(a)(1); § 17.1, subds. (a), (b).) Our reasoning is as follows. A dependent child's residence is that "of . . . the individual who has been given . . . care or custody [of the child] by a court of competent jurisdiction. . . ." (§ 17.1, subd. (a).) The Los Angeles court had removed Anthony from his parents' custody and placed him in the care of the

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Rule 5.610 states: "(a)(1) [T]he residence of the child is the residence of the person who has the legal right to physical custody of the child according to prior court order. . . . [¶] . . . [¶] [¶] (2) If there is no order determining custody, both parents are deemed to have physical custody. [¶] (3) The juvenile court may make a finding of paternity under rule 5.635. If there is no finding of paternity, the mother is deemed to have physical custody. [¶] . . . [¶] [¶] (b) The residence of the person entitled to physical custody may be verified by that person in court or by declaration of a social worker or probation officer in the transferring or receiving county. [¶] (c)(1) After making its jurisdictional finding, the court may order the case transferred to the juvenile court of the child's residence if: [¶] (A) The petition was filed in a county other than that of the child's residence; or [¶] (B) The child's residence was changed to another county after the petition was filed. [¶] . . . [¶] [¶] (3) If the court decides to transfer a dependency case, the court may order the transfer before or after the disposition hearing. [¶] (d) If, after the child has been placed under a program of supervision, the residence is changed to another county, the court may, on an application for modification under rule 5.570, transfer the case to the juvenile court of the other county. [¶] (e) After the court determines the identity and residence of the child's custodian, the court must consider whether transfer of the case would be in the child's best interest. The court may not transfer the case unless it determines that the transfer will protect or further the child's best interest." (Rule 5.610.)

Los Angeles Department for placement with Rosario. The Los Angeles Department is not an "individual." (§ 17.1, subd. (a).) Rosario is. To the extent that the Los Angeles Department had custody of Anthony, it did not have "physical custody." (§ 17.1, subd. (b); rule 5.610(a)(1).) Rosario did.

The Imperial County Department relies on *In re Eleanor A.* (1978) 84 Cal.App.3d 184, for the proposition that a child's temporary placement in another county does not change his legal residence to that county. That case is inapposite. *In re Eleanor A.*, *supra*, dealt with the interpretation of subdivisions (d) and (e) of section 17.1. (*In re Eleanor A.*, *supra*, at pp. 188-191.) By its own terms, subdivision (d) is inapplicable here because Anthony's "residence . . . is . . . determined under [subdivision] (a). . . ." (§ 17.1, subd. (d).) Subdivision (e) is inapplicable because Anthony has not "been declared permanently free from the custody and control of his . . . parents" (§ 17.1, subd. (e)), either according to the statutory interpretation set forth in *In re Eleanor A.*, *supra*, at pp. 188-191, or according to any other reasonable interpretation of the current statutory scheme for dependent children.

As discussed above, the dependency petition was filed in the juvenile court of Los Angeles County, where Anthony did not reside. (Rule 5.610(c)(1)(A).)<sup>8</sup> Then, Anthony was moved to Imperial County. The Los Angeles court properly transferred the case to Imperial County, where Anthony resided at the time of the transfer. (Rule 5.610(c)(1)(A))

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<sup>8</sup> The Imperial County Department did not appeal the transfer from Los Angeles County.



& (B), (d).) At the April 6, 2009 transfer-in hearing, the Imperial County court accepted the transfer, as it was bound to do. (Rule 5.612(a)(1); *In re J.C.*, *supra*, 104 Cal.App.4th at pp. 990-991; *In re R.D.*, *supra*, 163 Cal.App.4th at pp. 684-685.)

This brings us to the Imperial County court's April 20, 2009 transfer-out hearing. The court premised its transfer order on the belief that Los Angeles County was Claudia's and Adrian's "[l]ast legal residence within California" and therefore Anthony's current legal residence. That premise was factually and legally incorrect. First, Adrian's residence was never relevant to the determination of Anthony's residence. (Rule 5.610(a); § 17.1, subds. (a), (b).) Second, neither Claudia nor Anthony resided in Los Angeles County.<sup>9</sup> Third, at the time of the Imperial County court's transfer order, Claudia did not have custody of Anthony and he did not reside with her. (Rule 5.610(a)(1); § 17.1, subds. (a), (b).) Thus, Claudia's residence did not determine Anthony's. His residence was with Rosario, where he had been placed. For these

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<sup>9</sup> The Imperial County Department states that the Los Angeles Department's notice of the November 2008 jurisdictional and dispositional hearing listed a Los Angeles address for Claudia. The report to which the notice is attached, however, states Claudia was living in Mexico.

reasons, the transfer from Imperial County to Los Angeles County was unauthorized.

(Rules 5.610, 5.612.)<sup>10</sup>

Moreover, the Imperial County court omitted a crucial finding. In order to transfer the case, the court was required to "determine[] that the transfer [would] protect or further [Anthony's] best interest." (Rule 5.610(e); see also *In re J.C.*, *supra*, 104 Cal.App.4th at pp. 992-993; *In re R.D.*, *supra*, 163 Cal.App.4th at pp. 685, 687.) Instead, the court orally stated "that transfer of the case will not be detrimental to [Anthony's] best interest." The court even altered mandatory Judicial Council form JV-550, Juvenile Court Transfer Orders, by changing a preprinted statement from "Transfer . . . is in the child's best interests" to "Transfer . . . is not detrimental to the child's best interests."<sup>11</sup> This seemingly subtle change transformed the required affirmation that transfer would "protect or further" Anthony's best interest (rule 5.610(e)) to a mere negation of any harm to Anthony's best interest. This diminution of the required finding was error.

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<sup>10</sup> Section 375 has no application in this case. That section states: "Whenever a petition is filed in the juvenile court of a county other than the residence of the person named in the petition, or whenever, subsequent to the filing of a petition in the juvenile court of the county where such minor resides, the residence of the person who would be legally entitled to the custody of such minor were it not for the existence of a court order issued pursuant to this chapter is changed to another county, the entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor, and the juvenile court of the county wherein such person then resides shall take jurisdiction of the case upon the receipt and filing with it of such finding of the facts and an order transferring the case." (§ 375.)

<sup>11</sup> This form is mandatory and "must include all required information and findings." (Rule 5.610(f).)

Because the Imperial County's transfer order was based on an incorrect finding regarding Anthony's residence and omitted the necessary finding that the transfer would protect or further Anthony's best interest, we reverse the order.

DISPOSITION

The order transferring the case to Los Angeles County is reversed.

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O'ROURKE, J.

WE CONCUR:

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NARES, Acting P. J.

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McDONALD, J.